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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 4359

12 **ROSA G. ZAIA**
41595 Deanna Ranch Rd.
13 Murietta, CA 92362

14 **Pharmacy Technician Registration No.**
38750

A C C U S A T I O N

15
16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about August 28, 2001, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number 38750 to Rosa G. Zaia (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on January 31, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

1 4. Section 4300 of the Code states:

2 (a) Every license issued may be suspended or revoked.

3 (b) The board shall discipline the holder of any license issued by
4 the board, whose default has been entered or whose case has been
5 heard by the board and found guilty, by any of the following
6 methods:

7 (1) Suspending judgment.

8 (2) Placing him or her upon probation.

9 (3) Suspending his or her right to practice for a period not
10 exceeding one year.

11 (4) Revoking his or her license.

12 (5) Taking any other action in relation to disciplining him or her
13 as the board in its discretion may deem proper.

14 ...

15 (e) The proceedings under this article shall be conducted in
16 accordance with Chapter 5 (commencing with Section 11500) of
17 Part 1 of Division 3 of the Government Code, and the board shall
18 have all the powers granted therein. The action shall be final,
19 except that the propriety of the action is subject to review by the
20 superior court pursuant to Section 1094.5 of the Code of Civil
21 Procedure.

22 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
23 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
24 disciplinary action during the period within which the license may be renewed, restored, reissued
25 or reinstated.

26 **STATUTORY AND REGULATORY PROVISIONS**

27 6. Section 4301 of the Code states:

28 The board shall take action against any holder of a license who is
 guilty of unprofessional conduct or whose license has been
 procured by fraud or misrepresentation or issued by mistake.
 Unprofessional conduct shall include, but is not limited to, any of
 the following:

 ...

 (h) The administering to oneself, of any controlled substance, or the
 use of any dangerous drug or of alcoholic beverages to the extent or
 in a manner as to be dangerous or injurious to oneself, to a person

holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

...

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment....

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially

1 related to the qualifications, functions, or duties of the business or profession for which the
2 license was issued.

3 9. Section 493 of the Code states:

4 Notwithstanding any other provision of law, in a proceeding
5 conducted by a board within the department pursuant to law to deny
6 an application for a license or to suspend or revoke a license or
7 otherwise take disciplinary action against a person who holds a
8 license, upon the ground that the applicant or the licensee has been
9 convicted of a crime substantially related to the qualifications,
10 functions, and duties of the licensee in question, the record of
11 conviction of the crime shall be conclusive evidence of the fact that
12 the conviction occurred, but only of that fact, and the board may
13 inquire into the circumstances surrounding the commission of the
14 crime in order to fix the degree of discipline or to determine if the
15 conviction is substantially related to the qualifications, functions,
16 and duties of the licensee in question.

11 As used in this section, 'license' includes 'certificate,' 'permit,'
12 'authority,' and 'registration.'

13 10. Title 16, California Code of Regulations, section 1769, states:

14 (b) When considering the suspension or revocation of a facility or a
15 personal license on the ground that the licensee or the registrant has
16 been convicted of a crime, the board, in evaluating the
17 rehabilitation of such person and his present eligibility for a license
18 will consider the following criteria:

17 (1) Nature and severity of the act(s) or offense(s).

18 (2) Total criminal record.

19 (3) The time that has elapsed since commission of the act(s) or
20 offense(s).

21 (4) Whether the licensee has complied with all terms of parole,
22 probation, restitution or any other sanctions lawfully imposed
23 against the licensee.

24 (5) Evidence, if any, of rehabilitation submitted by the licensee.

25 11. Title 16, California Code of Regulations, section 1770, states:

26 For the purpose of denial, suspension, or revocation of a personal or
27 facility license pursuant to Division 1.5 (commencing with Section
28 475) of the Business and Professions Code, a crime or act shall be
considered substantially related to the qualifications, functions or
duties of a licensee or registrant if to a substantial degree it
evidences present or potential unfitness of a licensee or registrant to

perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

COST RECOVERY

12. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(September 7, 2011 Conviction of DUI on November 11, 2010)

13. Respondent is subject to disciplinary action under Code section 4301, subdivision (l) for conviction of a crime substantially related to the qualifications, functions and duties of a Pharmacy Technician in that in *The People of the State of California v. Rosa Guadalupe Zaia*, Riverside Superior Court, Case No. RIM 10016185, Respondent was convicted on her guilty plea of driving under the influence of alcohol with a B.A.C. of 0.08% or greater in violation of Vehicle Code section 23152(b) on September 7, 2011.

14. The circumstances are as follows. On November 11, 2010, an Officer from the Riverside CHP responded to a traffic collision at about 1811 hours. Upon arriving at the scene, the officer saw a blue pickup truck parked along the right side of the road with the front right tire flat and the curtain airbags deployed. The officer was unable to locate the driver of the truck near the vehicle. The officer was contacted by the driver of another vehicle who advised the officer that the driver of the pickup was the passenger in his vehicle. Respondent was identified as the driver of the pickup truck. Respondent was unable to exit from the vehicle without assistance. She lost her balance and almost fell three times as she walked to the patrol car. The officer had Respondent lean against the patrol car but she fell down again as she reached for her purse, which was on the hood of the patrol car. The officer noticed the odor of an alcoholic beverage on Respondent and her breath. Respondent admitted to the officer that she had consumed alcoholic beverages. No Field Sobriety Tests were performed due to Respondent's inability to maintain her balance.

1 15. As the officer placed handcuffs on Respondent, she reached back and grabbed the
2 officer's groin and offered to perform sex acts on the officer in order to not be arrested.
3 Respondent was transported to Riverside Community Hospital for medical clearance since she
4 had been falling. A blood sample was obtained and tested, resulting in a B.A.C. of 0.19%. It was
5 later determined that Respondent's vehicle had not collided with anything and, according to
6 Respondent, that the airbags deployed when she applied the brakes.

7 16. As a result of the conviction, Respondent was sentenced to 48 months summary
8 probation, committed to the custody of the Riverside County Sheriff for 40 days to be served in
9 the work release program, attend and complete a drinking driver program, and ordered to pay
10 \$1,904.00 in fines and penalties and \$414.45 in fees.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Use of Alcoholic Beverage on November 11, 2010)**

13 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
14 for unprofessional conduct for the use of an alcoholic beverage on November 11, 2010 in a
15 manner that was dangerous or injurious to herself or to the public, as more fully set forth in
16 paragraphs 13-16 above and incorporated by this reference as though set forth in full herein.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Conviction of More than One Misdemeanor Involving Use of Alcoholic Beverage)**

19 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (k)
20 for unprofessional conduct in that Respondent sustained more than one misdemeanor conviction
21 involving the use of an alcoholic beverage.

22 19. On September 7, 2011 in *The People of the State of California v. Rosa Guadalupe*
23 *Zaia*, Riverside Superior Court, Case No. RIM 10016185, Respondent was convicted on her
24 guilty plea of driving under the influence of alcohol with a B.A.C. of 0.08% or greater in
25 violation of Vehicle Code section 23152(b), a misdemeanor, as more fully set forth in paragraphs
26 13-16 above and incorporated by this reference as though set forth in full herein.

27 20. On October 4, 2007, in *The People of the State of California v. Rosa Guadalupe Zaia*,
28 Orange County Superior Court, Harbor Justice Center, Case No. 07SM02118, Respondent was

1 convicted on her guilty plea of driving under the influence of alcohol with a B.A.C. of 0.08% or
2 greater in violation of Vehicle Code section 23152(b), a misdemeanor. As a result of the
3 conviction, Respondent was sentenced to 3 years information probation, attend and complete a 6
4 month Level 2 First Offender Alcohol Program, attend and complete a Mothers' Against Drunk
5 Driving (MADD) Victim's Impact Panel or 2 AA meetings in lieu of the Impact Panel, complete
6 10 days of community service, and payment of fines and fees in the amount of \$1,510.50.

7 21. The circumstances leading to the October 4, 2007 conviction are as follows. At about
8 1440 hours on May 18, 2007, an officer of the Orange County CHP observed two vehicles
9 stopped on the right shoulder of Interstate 5 during a routine patrol. The officer was advised that
10 a collision had occurred. When the officer contacted Respondent, who was the driver of the
11 Chevrolet pickup truck, the officer smelled the odor of an alcoholic beverage on Respondent's
12 breath. Respondent admitted she drank one "spritzer" earlier at Bloomingdales. The officer
13 noted that Respondent's eyes were red and watery and that Respondent's gait was unsteady.
14 Respondent was not able to successfully complete the Field Sobriety Tests. Preliminary Alcohol
15 Screening results were 0.215% at 1514 hours and 0.213% at 1516 hours. A blood sample was
16 obtained and tested, which indicated a B.A.C. of 0.20%.

17 DISCIPLINE CONSIDERATIONS

18 22. To determine the degree of discipline, if any, to be imposed on Respondent,
19 Complainant alleges that on or about February 4, 2010, the Board of Pharmacy issued a Letter of
20 Admonishment to Respondent in Case Number CI 2007 37037 for the October 4, 2007 conviction
21 in *The People of the State of California v. Rosa Guadalupe Zaia*, Orange County Superior Court,
22 Harbor Justice Center, Case No. 07SM02118, in which Respondent was convicted on her guilty
23 plea of driving under the influence of alcohol with a B.A.C. of 0.08% or greater in violation of
24 Vehicle Code section 23152(b).

25 PRAYER

26 * WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
28

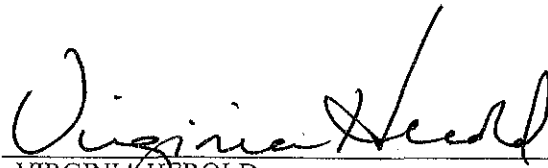
1 1. Revoking or suspending Pharmacy Technician Registration Number 38750, issued to
2 Rosa G. Zaia;

3 2. Ordering Rosa G. Zaia to pay the Board of Pharmacy the reasonable costs of the
4 investigation and enforcement of this case, pursuant to Business and Professions Code section
5 125.3; and,

6 3. Taking such other and further action as deemed necessary and proper.
7

8
9 DATED:

10 10/9/12

11 

12 VIRGINIA HEROLD
13 Executive Officer
14 Board of Pharmacy
15 Department of Consumer Affairs
16 State of California
17 Complainant

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